

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Rules and Regulations Implementing)
Minimum Customer Account Record) CG Docket No. 02-386
Exchange Obligations on All Local and)
Interexchange Carriers)
)
)

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Cox supports the Commission's proposal to standardize the customer account record exchange ("CARE") process and to require the participation of both local exchange carriers ("LECs") and interexchange carriers ("IXCs"). Rather than codifying a piecemeal version of the existing CARE standards, however, the Commission should mandate that all LECs and IXCs comply with a uniform, minimum, national CARE standard to be determined by the Ordering and Billing Forum ("OBF"). Mandating compliance with this forthcoming standard would be preferable to codifying specific existing CARE standards in the Commission's rules because the OBF, as an industry consensus-based standards setting body, is better equipped to accurately determine the minimum information to be exchanged. In addition, OBF will retain the flexibility to alter its requirements as conditions and experience warrant without the necessity of notice and comment rulemaking procedures.

¹ Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, *Notice of Proposed Rulemaking*, CG Docket No. 02-386, FCC 04-50, 69 FR 20845 (released March 25, 2004) (the "Notice").

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If the Commission is not inclined to allow the OBF to set appropriate CARE standards, then the Commission must be certain to mandate compliance, as described below, with only the minimum CARE requirements necessary to ensure accurate carrier-change activity. Finally, the Commission should avoid allowing this issue to be addressed individually by state commissions. The issues involved in this proceeding are purely technical and not subject to the types of local variation that make individualized state attention appropriate or desirable.

I. INTRODUCTION

The Commission began this proceeding in response to petitions filed by Americatele and jointly by AT&T, Sprint, and WorldCom (collectively, the "Petitioners") requesting that the Commission place burdensome new demands on LECs to provide detailed information to IXC's when a LEC's customers change carriers.² Cox filed comments and reply comments in response to the Petitions, acknowledging that national CARE standards might be desirable. Cox also showed that the extensive CARE requirements the Petitioners requested are unnecessary to facilitate the smooth transition of customers from one carrier to another.³

The *Notice* seeks additional comment on many of the Petitioners' requests, including national CARE standards modeled on those proposed by the Petitioners.⁴ As Cox showed in its earlier filings, however, the proposed standards will not streamline the CARE process or protect

² Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatele Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corporation, and WorldCom, Inc., *Public Notice*, 17 FCC Red 25535 (2002). *See also* Obligations of All Local Exchange Carriers to Provide Timely and Accurate Billing Name and Address Service to Interexchange Carriers, filed by Americatele Corporation on September 5, 2002 (the "Americatele Petition"); Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corporation, and WorldCom, Inc. on November 22, 2002 (the "Joint Petition"). The Americatele Petition and the Joint Petition are collectively referred to herein as the "Petitions".

³ Comments of Cox Communications, Inc., filed January 21, 2003, at 2 ("Cox Comments").

customers. Instead the proposed standards would compel LECs to give IXCs free access to a wealth of information, and would raise both competitive and customer privacy concerns.⁵ Cox also pointed out that the current CARE process is deficient chiefly due to IXCs' widespread non-compliance with existing industry standards.⁶

Accordingly, Cox agreed that mandatory CARE procedures that place minimal compliance burdens on all carriers would be preferable to the micromanagement of the CARE process and one-way requirements on LECs only (or, if some carriers had their way, only on CLECs) requested by the Petitions.⁷ Several parties indicated that the OBF is the appropriate standards-setting body to address mandatory minimum standards.⁸ Cox is an active participant in the OBF and is confident that the OBF can develop appropriate minimal CARE requirements that will protect customers and promote intercarrier cooperation in information exchanges.

II. THE COMMISSION SHOULD ADOPT RULES THAT RECOGNIZE THE OBF AS THE APPROPRIATE BODY TO DETERMINE MANDATORY MINIMUM CARE REQUIREMENTS.

In the *Notice*, the Commission indicates its belief that a uniform CARE process observed by all LECs, and IXCs could provide a better framework for fair and consistent enforcement activity by the Commission.⁹ Cox believes the Commission's current rules provide sufficient tools to combat carrier abuses of the CARE process.¹⁰ Cox also acknowledges, however, that applying minimum CARE standards to all carriers could benefit carriers, consumers, and the Commission by ensuring that all parties are fully aware of the rules governing intercarrier

⁴ *Notice*, ¶¶ 11-12.

⁵ Reply Comments of Cox Communications, Inc., filed February 4, 2003 at 3, 6 ("Cox Reply Comments").

⁶ Cox Comments at 7-8; Cox Reply comments at 2.

⁷ Cox Comments at 3-7.

⁸ *See, e.g.*, Allegiance Comments at 4-5; BellSouth Comments at 3-4; NECA Comments at 4.

⁹ *Notice*, ¶¶ 10, 23.

information transfer when customers change carriers.¹¹ The best mechanism for setting and maintaining such standards, however, is the ongoing consultative process of the OBF rather than the comparatively cumbersome process of FCC notice and comment rulemaking.

The keys to developing a successful CARE regime are (1) keeping the requirements to a reasonable minimum – a standard that the Petitions plainly failed – and (2) maintaining sufficient flexibility to allow procedures to be changed over time to accommodate new circumstances. The Commission's notice and comment procedures are not ideally suited to either of these tasks because the rulemaking process is prone to the development of complex and detailed rules and once those rules are adopted, they often become very hard to change.

The OBF, on the other hand, has been examining CARE-related issues for years and is uniquely positioned to determine a minimum standard that is appropriately tailored to accomplishing the Commission's legitimate goals of consumer protection and ease of enforcement. As an industry-led group that develops its prescriptions by consensus, the OBF would be unlikely to adopt requirements that are unduly burdensome or that put important customer information at risk. Moreover, because the OBF's procedures are more streamlined than the Commission's notice and comment requirements, an OBF-adopted standard would be easier to modify as carriers' information exchange needs change.

In addition, the OBF already has performed much of the work of creating a uniform national minimum standard through its development of the existing *Equal Access Subscription Customer Account Record Exchange Industry Support Interface* ("CARE/ISI") document, which was developed to facilitate the exchange of end user account information. While the CARE/ISI

¹⁰ Cox Comments at 2.

¹¹ *Id.* at 7-10.

document itself is too detailed to provide an appropriate model for FCC rules, it demonstrates the OBF's familiarity with these issues and its ability to conceive and develop CARE solutions. Further, the OBF is committed to developing an appropriate minimum CARE standard that can serve as the basis for carrier compliance and Commission enforcement processes.

Without FCC approval, however, any OBF-adopted standard would remain voluntary, and the existing conflicts over the CARE process would persist. Thus, the best course would be for the Commission to adopt rules that (1) acknowledge OBF as the body responsible for establishing CARE standards; and (2) mandate carrier participation in the OBF-determined process. Indeed, the Commission has recognized private standards-setting organizations in several other contexts with beneficial results.¹² If the OBF is certain of Commission support, it can move expeditiously to complete a final set of minimum CARE standards for the Commission's review within a reasonable time.

II. ANY CARE RULES THE COMMISSION ADOPTS MUST BE SIMPLE AND MANDATORY TO BE EFFECTIVE.

If the Commission determines that it should adopt its own specific CARE standards rather than endorsing an OBF-developed standard, the Commission still should require compliance by all carriers, including incumbent and competitive LECs and IXC's, and avoid adopting complex CARE standards and overly burdensome information disclosures. Both of

¹² For example, the Commission has delegated to the North American Numbering Council ("NANC") is a consensus-based organization composed of industry representatives that administers the North American Numbering Plan. 47 C.F.R. § 52.5. Likewise, the Commission requires that all telephone companies participate in the National Exchange Carrier Association, 47 C.F.R. § 69.601(b), an industry group the Commission uses to administer its access charge regime and its Interstate TRS Fund. More recently, in the non-common-carrier context, the Commission approved an inter-industry agreement concerning plug-and-play cable/consumer equipment compatibility that gave broad authority to CableLabs, a cable industry group, to approve new digital cable products introduced by consumer electronics manufacturers. Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment, *Second Report and Order and Second Notice of Proposed Rulemaking*, 18 FCC Rcd 20885, 20902-03, 20918-19 (2003).

these elements are necessary for a workable system. First, mandatory compliance by all carriers is the only reliable way to ensure smooth completion of carrier changes. In addition, the Commission must keep the amount of information required to be exchanged at the minimum level necessary to avoid overly burdening LECs, to prevent IXC's from exploiting the CARE process for their competitive benefit and to protect customers from unwarranted disclosure of their personal information.¹³

Accordingly, the Commission should reject most of the specific requests found in the Petitions and comments thereon. For example, the Commission should not require LECs to provide IXC's with disconnect records as suggested by BellSouth and Intrado.¹⁴ Although Cox often provides such information to IXC's based on Cox's determination of its own business interests, there is no basis for requiring it to do so. Requiring LECs to provide disconnect records to IXC's mostly would benefit IXC marketing efforts, not IXC or LEC customers. It is not a LEC's job to tell an IXC how to find a customer or former customer, and if a customer disconnects without telling the IXC, it may well reflect the customer's opinion of that IXC.¹⁵

Any Commission-developed standards also should contain reasonable periods for action on CARE exchanges that account for the differing capabilities of individual carriers. The Petitions sought deadlines of between one and two business days for CARE processing by electronic means and five business days for manual processing.¹⁶ As Cox pointed out in its reply comments, these time periods are too short. Until volume justifies the investment in electronic

¹³ Cox Comments at 7-8; Cox Reply comments at 2.

¹⁴ BellSouth Comments at 3; Intrado Comments at 6.

¹⁵ Cox also notes that informing an IXC that a customer has disconnected will not help the IXC determine which carrier is now serving that customer. As Cox noted in its comments, there are many circumstances in which a LEC does not know what has happened to a disconnecting customer. Cox Comments at 3-4.

¹⁶ Joint Petition, Appendix A at 7-8.

systems, many internal CLEC systems are manual and therefore labor intensive. Requiring these manual processes to be completed in five days or less is simply unreasonable. Even where CLECs use electronic processes, volume-based delays are common. Cox reiterates that a timeframe of ten days for both electronic and manual processing is necessary to ensure reasonably accurate and reliable results.¹⁷

The Commission also should avoid adopting specific transaction codes status indicators (“TCSIs”) from the OBF’s existing standards and compelling all carriers to use them in exchanging customer account information.¹⁸ To Cox’s knowledge, no industry group – including the OBF – has given serious consideration to how TCSIs should be used or whether any particular subset of TCSIs is suitable for mandatory use. In fact, much of the information that the Petitions would require LECs to provide is irrelevant to the interaction between the IXC and the LEC and has nothing to do with the smooth transition of customers from one carrier to another.¹⁹ For that reason, if the Commission places CARE standards in its rules, it should adopt more generalized standards, such as those suggested by Cox in its comments.²⁰ If, on the other hand, the Commission wishes to adopt OBF-developed standards, then it should reject the piecemeal approach indicated in the *Notice* and instead approve generally the OBF-adopted standard and leave OBF with the authority to alter that standard on a going-forward basis.

Cox agrees with the Commission that developing suitable CARE standards must take precedence over the construction of a national line-level database.²¹ A database will not address

¹⁷ Cox Comments at 5-6.

¹⁸ *Notice*, ¶ 11.

¹⁹ Cox Comments at 6.

²⁰ *Id.* at 7-8.

²¹ *Notice*, ¶ 19.

the failure of IXC's to provide their customer data in a timely manner. Even the most comprehensive national database would be useless to solve carrier change problems if the IXC's do not meet their obligations to their own customers. Moreover, a database presents complicated and important funding issues. Since the purpose of the database would be to benefit IXC's, all costs related to it logically would have to be borne by them.²²

In addition, significant privacy issues would need to be addressed before any database could be put into operation. For instance, the Commission's rules make it clear that BNA can be used only for billing and collection purposes, and any database would have to incorporate safeguards to prevent misuse of that information. Some of the information in the database also would constitute customer proprietary network information ("CPNI"), and therefore would be subject to the requirements of Section 222 of the Communications Act and to the Commission's CPNI rules.²³ Similarly, as described in Cox's comments, information on connections and disconnections is competitively sensitive, so it would be equally important to ensure that IXC's do not share such information with their CLEC operations.²⁴ The Commission should not delay action to address the basic CARE requirements while it resolves these complex and contentious issues.

²² As Cox pointed out in its Reply Comments, these costs, in addition to the direct costs of maintaining the database, would include any costs incurred by LECs to provide the underlying data. Indeed, because the Commission already has held that LECs are entitled to be paid for providing BNA to IXC's, LECs should receive a share of any revenue related to use of BNA in any future national database.

²³ 47 U.S.C. § 222; 47 C.F.R. § 64.2001-.2009.

²⁴ Cox Comments at 5.

III. THE COMMISSION SHOULD ESTABLISH NATIONAL CARE STANDARDS RATHER THAN ALLOWING THE STATES TO ADDRESS THIS ISSUE INDIVIDUALLY.

Regardless of whether the Commission adopts OBF's minimal CARE standard or develops its own from existing standards, the Commission should create a national standard rather than allowing the states to address this issue individually. In the *Notice*, the Commission notes that NARUC is developing model standards that could be adopted by the states.²⁵ Presumably, these model rules would be adapted to suit each state commission's view of the appropriate CARE responsibilities. This would be the worst possible result. Fifty different state standards would ensure neither full participation nor the minimally necessary standards.

Moreover, CARE standards are particularly unsuited to individualized state treatment because the information necessary to complete carrier changes does not vary with the customer's locale. This issue is purely technical and is best suited to a uniform national standard. In addition, as the Commission is well aware, many carriers operate in multiple states and the burdens of complying with multiple, different CARE standards would be great. Imposing those burdens would be senseless because there is no local variation to justify them. Accordingly, the Commission should eliminate the need for state rules on this subject by adopting the national standards Cox has described above. Moreover, the Commission should preempt any inconsistent state requirements as conflicting with federal rules to avoid the possibility that carriers will be forced to comply with dueling rules.²⁶

²⁵ *Notice*, ¶ 22.

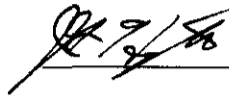
²⁶ See 47 U.S.C.A. § 258(a) (authorizing Commission to determine procedures for carriers that "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.")

IV. CONCLUSION

For all these reasons, Cox urges the Commission to recognize OBF as the appropriate body to establish uniform, national CARE requirements and to ensure that any CARE rules that are adopted are those minimally necessary to accomplish customer-initiated carrier changes.

Respectfully submitted,

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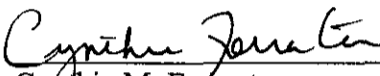
June 3, 2004

CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 3rd day of June, 2004, I caused a copy of the foregoing Comments of Cox Communications, Inc. to be served on the following via hand delivery, or where noted with an asterisk, via First Class U.S. mail:

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